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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of California Internet, L.P. dba GeoLinks (U-7326-C) for Rehearing of Resolution T-17764	Application 22-05-__

APPLICATION OF CALIFORNIA INTERNET, L.P. DBA GEOLINKS (U-7326-C) FOR REHEARING OF RESOLUTION T-17764

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(U-7326-C) FOR REHEARING OF RESOLUTION T-17764

Pursuant to Rule 16.1 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, California Internet, L.P. dba GeoLinks ("GeoLinks" or the "Company") timely submits this application for rehearing of Resolution T-17764 (the "Resolution"), which was mailed on April 11, 2022. The Resolution denies GeoLinks' request to expand its service area as an Eligible Telecommunications Carrier ("ETC") to include the census blocks where it is a "winning bidder" via the Federal Communications Commission's ("FCC") competitive bidding process for disbursement of Rural Digital Opportunity Fund ("RDOF") support.[1] Because the Resolution denies GeoLinks ETC status in the RDOF service areas where the Company is a "winning bidder" and such ETC status is a requirement to receive RDOF authorization from the FCC, the Resolution has the ultimate effect of denying GeoLinks the ability to receive more than $148 million in federal support to provide voice and Gigabit fiber broadband service to over 90,000 unserved rural locations in California

As a fundamental threshold matter, the Commission required any changes to GeoLinks' existing ETC designation to be filed in a Tier 2 Advice Letter.[2] Resolution T-17646, which granted GeoLinks its initial ETC designation in 2019, states at Ordering Paragraph 8 that "GeoLinks *shall* file a Tier 2 Advice Letter to request approval for any future changes to its approved designated service area."[3] This ordering paragraph may not be changed by anyone but the Commission itself,

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[1] Resolution at 1.

[2] *See* Resolution T-17646, Feb. 19, 2021, at Ordering Paragraph 8.

[3] *Id.* (emphasis added).

and in fact it was not changed. Following the Commission's mandate, on January 6, 2021, GeoLinks properly filed its ETC extension request in AL 13 as a Tier 2 Advice Letter. The Resolution is ineffective because the Commission failed to provide notice of suspension of AL 13, a Tier 2 Advice Letter, to GeoLinks within 30 days, as required by the Commission's General Order ("GO") 96-B. Consequently, by operation of law, GeoLinks was deemed an ETC in its RDOF service areas on February 5, 2021. This final action renders moot the Commission's subsequent contrary actions.

But assuming *arguendo* that AL 13 did not become effective automatically, in denying GeoLinks' request to expand its existing ETC designation, the Commission commits legal error by (i) failing to follow its own requirements for Tier 2 Advice Letters under D.07-01-024 and GO 96-B, (ii) exceeding its authority with respect to Advice Letter and ETC designation review, (iii) failing to follow its own precedent with respect to ETC designation review, (iv) failing to grant GeoLinks an opportunity to adequately reply to additional information included in the Resolution which was not previously requested by Communications Division ("CD") staff, (v) failing to acknowledge supplemental information GeoLinks provided in the record in direct response to discussions with Commission Staff, (vi) failing to follow California law that requires the Commission leverage federal funding for broadband deployment, and (vii) failing to consider in its public interest analysis the very likely harms of impeding the FCC's authorization of RDOF support to GeoLinks for deployment of Gigabit fiber service to underserved rural California communities. These actions on the part of the Commission not only constitute reversible legal and factual error but also prevent California consumers from accessing broadband infrastructure by denying GeoLinks the opportunity to receive more than $148 million in RDOF subsidies to complete Gigabit-level fiber broadband deployment in unserved areas in the state. It is not in the public interest to deny consumers in these over 90,000 locations broadband service in the near term.

I. Background and Procedural History

Headquartered in southern California with more than one hundred employees in the state, GeoLinks began providing broadband service to Californians more than a decade ago. GeoLinks currently delivers high-speed broadband service at speeds of up to a Gigabit to more than 5,000 retail and wholesale customers in California. On June 1, 2017, the Commission granted the

Company a Certificate of Public Convenience and Necessity ("CPCN") to provide facilities-based and resold and limited facilities-based and competitive local exchange and interexchange telecommunications service in Decision No. 17-05-023. Unlike other national broadband companies, the mission of GeoLinks is to provide state-of-the-art broadband service in rural and unserved areas to bridge the Digital Divide. In taking on this mission, GeoLinks works in rugged and difficult terrain, sometimes powers its mountaintop sites with solar energy, and seeks out advanced technologies to overcome barriers to infrastructure that traditional providers overlook.

In 2016, GeoLinks began expanding its customer base to include unserved and underserved areas throughout California and in neighboring states. Working closely in partnership with CENIC, the California research and education network, GeoLinks was the largest construction grant winner for California K-12 schools and libraries in 2016-2018, and 2020. With the benefit of that funding, GeoLinks now provides high-speed broadband to rural school districts and surrounding communities throughout the state that previously had no access to any high-speed broadband service from traditional providers. In 2017 alone, GeoLinks expanded its customer base to include nearly thirty rural school districts and surrounding communities throughout the state that previously had not had access to any high-speed broadband service. To date, GeoLinks has connected or is in the process of connecting more than sixty anchor institutions across the state though CENIC's Broadband Infrastructure Improvement Grant ("BIIG") program.

Building on GeoLinks' successful experience connecting community anchor institutions in rural and hard-to-reach areas, GeoLinks sought and was awarded $82.6 million over 10 years to build broadband infrastructure capable of providing speeds of 100/20 Mbps to 10,922 locations in California through the FCC's Connect America Fund Phase II ("CAF II") program. As a condition to receiving that support, the Company received an ETC designation for its CAF II award areas in California on February 21, 2019, via Resolution T-17646. In Resolution T-17646, although not required by Commission regulations, the Commission nonetheless found GeoLinks to be "financially capable" of providing its proposed broadband Internet access and VoIP services, after a Staff review of its financial statements because "Staff concluded GeoLinks had the existing capital resources to *commence* build-out of its infrastructure.[4] The Commission's designation of ETC status in Resolution T-17646 enabled GeoLinks to obtain FCC authorization for its CAF

[4] Resolution T-17646 at 7 (emphasis added).

support. In Ordering Paragraph 8 of that Resolution, and of particular relevance here, the Commission stated "GeoLinks shall file a Tier 2 Advice Letter to request approval for any future changes to its approved designated service area."[5]

Since receiving its ETC designation for its CAF II areas, GeoLinks has had no financial or deployment difficulties in meeting its CAF II build-out requirements, has had its voluntary 20% buildout milestone for California verified by the Universal Service Administrative Company, and is on track to exceed its federally mandated 40% CAF II deployment milestone by the December 31, 2022 deadline. Thus, GeoLinks' stellar and unblemished CAF II track record does not lend any support to the Resolution's concerns about GeoLinks' financial capability, and its ability to meet – in fact, exceed – its federally-mandated deployment milestones.

In 2020, GeoLinks decided to expand its California service area through the RDOF program and to continue its important mission of bridging the urban-rural digital divide that disproportionately afflicts unserved and underserved rural communities. Through its successful participation in the CAF II program, GeoLinks was familiar with the FCC's and the Commission's processes, performance obligations and reporting requirements. Prior to placing its RDOF bids, GeoLinks carefully conducted significant research into California's unserved areas in relation to its current and planned facilities and undertook an advanced technology review. GeoLinks' winning bids reflected synergies that would be realized by extending its existing and planned network assets to these new unserved or underserved areas. GeoLinks was thrilled to be provisionally awarded approximately $234.9 million in RDOF funding over 10 years to serve 128,297 locations in California, Arizona, and Nevada. Of this amount, more than $148 million is to deploy voice and 1 Gbps/500 Mbps (and in limited areas 100/20 Mbps) broadband service to more than 90,000 locations in rural California. The state commissions in both Arizona and Nevada designated GeoLinks as an ETC in timely and routine fashion. On January 6, 2021, GeoLinks filed Advice Letter No. 13 with the Commission requesting expansion of its existing ETC designation to include the service areas where it provisionally won RDOF support. This Advice Letter was timely filed within the 30-day window established by the FCC under the RDOF procedures.

[5] *Id.* at 16, Ordering Paragraph 8.

Pursuant to Ordering Paragraph 8 of Resolution T-17646 which awarded GeoLinks its initial ETC designation for its CAF II areas, GeoLinks properly filed this request for expansion of its ETC authority as a Tier 2 Advice Letter.[6] AL 13 elicited no protests. GeoLinks did not receive any notice of suspension from the CD by February 5, 2021 (the 30th day following the filing of AL 13), meaning that AL 13 became effective under the GO 96-B, Rule 7.2 of the Telecommunications Industry Rules. Rule 7.2 provides that "If a Tier 2 advice letter has not been suspended by staff by the end of the initial 30-day review period, the Tier 2 advice letter is deemed approved."[7] Such is the case here. While the Commission's online Suspended Advice Letter webpage now represents that AL 13 was suspended by Staff, purportedly as of February 5, 2021,[8] no other information or communication from the Commission to the Company supports that this action occurred and that it was communicated by Staff via a notice of suspension as is required By rule 7.2 to the Company.

Despite not receiving a notice of suspension, in an effort to cooperate with CD Staff, GeoLinks timely responded to three data requests issued by CD Staff, met with the Staff by video conference and by phone to answer questions and provide additional data, and diligently kept the Commission updated on its filings with the FCC concerning its RDOF long-form application. In November 2021, CD Staff informed GeoLinks that no additional information was required, and that Staff had made its recommendation regarding disposition of GeoLinks' AL 13 to CD management.

On February 11, 2022, the CD circulated a Draft of the Resolution ("Draft Resolution") recommending that the Commission deny GeoLinks' request to have its ETC designation expanded to include its RDOF award areas. The Draft Resolution premised its recommended denial on two conclusions. First, it speculated based on its own independent undertaking that GeoLinks is "not financially capable of building and operating its proposed *RDOF-subsidized* network in the timeframe *required by the FCC milestones* applicable to the RDOF Phase I (AU 904)" (emphases added).[9] Second, it asserted that GeoLinks' response to the FCC's solicitation

[6] Resolution T-17646 at 16, Ordering Paragraph 8.

[7] General Order 96-B, Telecommunications Industry Rules, Rule 7.2

[8] Advice Letter suspension information available at: https://apps.cpuc.ca.gov/apex/f?p=506:1:0::NO::P1_BRANCH,P1_TITLE:T,Telecommunication.

[9] Draft Resolution T-17764 at 6.

of winning bidders to relinquish support for certain census blocks deemed to not require new broadband coverage somehow "demonstrates that GeoLinks was unable to manage the information about its own RDOF winning bid at the basic level of proposed service area data characteristics to the satisfaction of the FCC."[10] In response, a representative of GeoLinks requested a meeting with CD Staff the day following release of the Draft Resolution to express its surprise and dismay at the recommended denial but was informed that Staff would not meet with GeoLinks before it filed Comments on the Draft Resolution.

On March 3, 2022, GeoLinks filed extensive Opening Comments on the Draft Resolution, explaining that it provided "no legally or factually sustainable reason for denial" and relied "on two improper grounds in concluding AL 13 should be denied: (1) a factually incorrect statement that GeoLinks is not financially capable of meeting the RDOF build-out requirements;[11] and (2) a factually and legally incorrect finding that GeoLinks' default of certain RDOF census blocks in California demonstrates a lack of operational capability."[12] After filing its Opening Comments, GeoLinks again requested a meeting with CD Staff to discuss the Draft Resolution in order to provide additional information to assuage Staff's concerns regarding GeoLinks' ETC designation expansion request. Staff declined to accept any meetings or provide any additional information. On March 8, 2022, GeoLinks filed Reply Comments on the Draft Resolution.[13]

On March 16, 2022, the day before the Draft Resolution was slated for full Commission vote, Commission President Alice Reynolds held the Draft Resolution for one meeting – until April 7, 2022 – in response to a request from several members of the California Legislature that the Commission delay its vote on the Draft Resolution "to allow GeoLinks the opportunity to provide additional information and to assure that the factual record for [the Draft Resolution] is

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[10] *Id.* at 7.

[11] *Id.* at 6-7.

[12] Comments at 1-2.

[13] On March 3, 2022, Electronic Frontier Foundation ("EFF") filed Comments on the Draft Resolution, but EFF made clear that it did not purport to comment on the facts of the Draft Resolution. EFF generally requested that the Commission give close scrutiny to ETC applicants and ensure the networks being proposed were "futureproof," by which it strongly advocated fiber-based networks. EFF Comments 3-6. As AL 13 and supplemental materials submitted in the record indicate, GeoLinks proposes to deploy a fiber network in approximately 95% of its RDOF-supported areas.

accurate."[14] On March 21, 2022, GeoLinks was finally able to meet with CD Staff via video conference to discuss the Draft Resolution. However, Staff did not ask any questions during that meeting and did not engage in any meaningful dialogue that would allow GeoLinks to correct any factual errors in the Draft Resolution or to provide any additional information to address any of Staff's purported concerns. On April 1, 2022, in a meeting facilitated by the Governor's Office, GeoLinks met again with CD Staff by video conference. During that meeting, Staff finally explained its specific concerns to GeoLinks regarding its ETC designation expansion request and identified suggested financial information Staff expected to see from GeoLinks that it had not yet provided (because CD Staff had not previously identified this documentation as a critical element of its review). In response to the discussion that took place during the April 1 meeting, GeoLinks sent CD Director Robert Osborn a letter outlining additional financial information and the next day filed a supplemental advice letter (AL 13-A) to submit that additional information into the record.[15]

A revised draft of the Resolution ("Draft Resolution Rev. 1") was not released until the day before the Commission's April 7, 2022 voting meeting. Draft Resolution Rev. 1 responded to comments, and contained new information not previously incorporated into the Draft Resolution and additional factual assertions that had not previously been provided to GeoLinks. Draft Resolution Rev. 1 removed one of the two issues as a basis of denial, the allegation that GeoLinks lacked operational fitness due to its voluntary relinquishment to the FCC of census blocks that lacked any unserved locations. The only remaining basis for denial of the ETC designation for the RDOF service area was the subjective determination regarding financial fitness based on criteria that are within the FCC's sole discretion to review and apply. Draft Resolution Rev. 1 failed to address where in the record it derived its new factual claims or provide any opportunity for GeoLinks to address them. The Commission unanimously voted to adopt the Draft Resolution Rev. 1 via its consent agenda the next day on April 7, 2022**.** Subsequent to the release of the Final Version of the Resolution, GeoLinks discovered that the Telecommunication Suspended Advice

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[14] *See* Letter from Sen. Caballero, dated March 8, 2022, and Letter from Assemblymembers Irwin, Aguiar-Curry, Newman, Gray, Bennett, Patterson, and Quirk-Silva, dated March 15, 2022.

[15] AL 13-A was filed on April 5, 2022 and duly served on the appropriate service lists.

Letter Search webpage incorrectly lists GeoLinks' AL 13 as a "Tier 3" Advice Letter.[16] AL 13 was previously listed as a Tier 2 advice letter on this same webpage.

II. DISCUSSION

A. The Commission Failed to Follow its Own Procedural Process Regarding AL 13

i. AL 13 is Effective Because CD Staff Failed to Provide the Requisite Notice of Suspension of AL 13

In designating GeoLinks as an ETC in connection with its CAF II authorization, the Commission adopted Resolution T-17646. Ordering Paragraph 8 of that Resolution states that "GeoLinks shall file a <u>Tier 2 Advice Letter</u> to request approval for any future changes to its approved designated service area."[17] Upon being announced as the RDOF auction winner for additional unserved rural areas in California, GeoLinks followed this directive and filed AL 13 as a Tier 2 Advice Letter.

The Commission's procedures for Tier 2 Advice Letters are clear. Pursuant to Decision ("D.") 07-01-024, "a Tier 2 advice letter is deemed approved if, after the 30-day initial review period has ended, there is no timely protest and the reviewing Industry Division has not *notified the utility* that the advice letter is being suspended."[18] Footnote 11 of D.07-01-024 explains that such "notification will (1) prevent the advice letter from being deemed approved, and (2) serve as a "suspension"…"[19] The importance of the notice of suspension to the utility was confirmed in D.07-09-019 where the Commission explained in the context of Tier 2 advice letters that "the effect of a deemed approval is automatic."[20] Further, in GO 96-B, Telecommunications Industry Rules, Rule 7.2 pertaining to "Matters Appropriate to a Tier 2 Advice Letter (Effective After Staff Approval), makes clear that, "If a Tier 2 advice letter has not been suspended by staff by the end of the initial 30-day review period, the Tier 2 advice letter is deemed approved." In addition, GO

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[16] Available at <u>https://apps.cpuc.ca.gov/apex/f?p=506:1:0::NO::P1_BRANCH,P1_TITLE:T,Telecommunication</u> (visited May 4, 2022).

[17] Resolution T-17646, Ordering Paragraph 8, at 16 (emphasis added).

[18] D.07-01-024, at 20 (emphasis added). As stated above, no party opposed AL 13 in a timely manner, or at all.

[19] *Id.* at n.11.

[20] D.07-09-019, at 60.

96-B states plainly that that the reviewing Industry Division will give notice of a suspension and that such notice "will state the reason for the suspension and its expected duration, which will not exceed 120 days from the end of the initial review period unless the utility agrees in writing to a longer suspension period."[21]

In this matter, the CD failed to provide timely and required notice to GeoLinks that CD was suspending Advice Letter 13. Any notice would have been required by February 5, 2021, but it was not provided. On February 11, 2021, GeoLinks' outside law firm proactively discovered a notation on the Commission's Suspended Advice Letters web page, that AL 13 was suspended, but no notice was received by GeoLinks itself as required. See Attachment 1, showing screenshot of the page taken by GeoLinks outside counsel, Davis Wright & Tremaine. The required notice typically is provided directly to the affected utility by email from CD Staff, as allowed for in Section 7.5.2 of GO 96-B, not by posting on the Suspended Advice Letter web page. If the Commission has changed its notice policies, GeoLinks can find no notification of any such change to Commission regulated entities and legal practitioners.

Posting a notation on the Suspended Advice Letter webpage does not constitute adequate notice. Even if it did, this notice failed because it does not contain, as required by Section 7.5.2 of GO 96-A, the reason for suspension or its expected duration. So, either the notice was not given at all, or it was defective; in either case, it is legally ineffective to deny GeoLinks ETC designation for the areas subject to AL 13 because approval of AL 13 as a Tier 2 Advice Letter was "automatic."[22]

Accordingly, AL 13 became effective on February 5, 2021, the 30th day following the filing of AL 13, and is deemed granted. Anything occurring after that date that suggests a contrary result is inconsistent with the law and established Commission policy and cannot overturn the plain result that AL 13 is "deemed granted" by operation of law. This clear legal error should be immediately corrected, and AL 13 deemed effective as of February 5, 2021.

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[21] Section 7.5.2 of General Order 96-B provides that the initial review period for an advice letter is the 30 days immediately following the date of filing. "No later than the last day of the initial review period, the reviewing Industry Division will notify the utility and any protestants if disposition of the advice letter will not occur within the initial review period. The Industry Division may notify the utility. . . by Internet. For any advice letter that may not be deemed approved, suspension is automatic if disposition of the advice letter has not occurred by the end of the initial review period. The reviewing Industry Division, however, will give notice of this suspension."

[22] D.07-09-019, at 60.

Moreover, upon filing and as late as February 11, 2021 when GeoLinks' outside law firm checked the Telecommunications Suspended Advice Letter webpage, AL 13 was properly listed as a Tier 2 advice letter. See Attachment 1. As noted above, subsequent to the release of the Final Version of the Resolution, GeoLinks discovered that the Telecommunication Suspended Advice Letter Search webpage was changed by CD staff to list GeoLinks' AL 13 as a "Tier 3" Advice Letter, which was not the case.[23] Under Telecom Industry Rule 7.3 of GO 96-B, Tier 3 Advice Letters are effective after Commission approval (which occurs in a formal Resolution voted at a Commission agenda meeting). To the extent that AL 13 was redesignated at some unknown date by CD Staff as a Tier 3 Advice Letter, that change was never communicated to the Company with any justification. As noted above, Commission Resolution T-17646, Ordering Para. 8 states that GeoLinks shall file a Tier 2 Advice Letter to request future changes to its designated service areas as an ETC. AL 13 thus was properly filed as a Tier 2 advice letter, and this category should govern its disposition. First, the more specific procedures established in Resolution T-17646 for GeoLinks, as an existing ETC, apply here, not the more general guidance in Resolution T-17693 provided to RDOF auction winners filing initial requests for ETC designation. Resolution T-17693 expresses no change to the provisions in Resolution T-17646 that apply to providers like GeoLinks with existing ETC designations. Second, neither Commission resolution includes language permitting CD Staff to unilaterally reclassify GeoLinks' Tier 2 Advice Letter as a Tier 3 Advice Letter, as CD appears to have done behind the scenes without notice to the Company. GeoLinks can only speculate given the absence of any CD notice or explanation of the change, but the reclassification of AL 13 as a Tier 3 Advice Letter appears to be a *post hoc* effort to delay or prevent GeoLinks from obtaining its ETC expansion designation by CD and a clear contravention of Ordering Paragraph 8 of Resolution T-17646, which provided a more streamlined designation path for companies like GeoLinks with existing ETC status. As a result of this improper effort of CD to circumvent the Commission's decisional language, the Commission should reverse Resolution T-17764, and find AL 13 was deemed effective as of February 5, 2021.

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[23] See Attachment 2 showing search results for "California Internet" on the Telecommunications Suspended Advice Letter Search webpage on May 10, 2022. Available at https://apps.cpuc.ca.gov/apex/f?p=506:1:0::NO::P1_BRANCH,P1_TITLE:T,Telecommunication

ii. CD Staff Failed to Give GeoLinks an Opportunity to Cure Any Defect or Omission in AL 13 as Required by GO 96-B

If for some reason Resolution T-17764 survives the fatal flaw described above, there are myriad other errors in this proceeding that require reconsideration and grant of ETC expansion designation to GeoLinks. In the Resolution, Staff asserted that it reviewed confidential financial information provided by GeoLinks and noted that the Company claimed that it has "access to credit facilities and equity investment to assist in meeting its capital requirements for its RDOF network build in California."[24] However, the Resolution added that "GeoLinks did not supply surety instruments demonstrating the firm has the necessary financing in place to fully cover the shortfall between the capital and operating costs of the network, internal cashflows of the firm, and the RDOF award amount."[25] The Commission appears to hinge its review of GeoLinks' capability to undertake the RDOF program entirely on whether or not the Company had surety instruments in place at the time AL 13 was being considered. For more than a year, CD Staff failed to inform GeoLinks of any previously unstated requirement for it to obtain surety instruments.

In its Data Request No. 3 Regarding Application for Amended ETC Status for FCC RDOF Program Certification, issued to GeoLinks on June 15, 2021, CD Staff asked GeoLinks for the following:

> 2.4 Documentation which definitively shows how GeoLinks will finance the RDOF-required network buildout in addition to other existing capital requirements of the company, including those of CAF II and RDOF. Staff acknowledges GeoLinks' previous responses which identify investment firms that are disclosed as having agreed to make capital contributions. However, GeoLinks needs to further disclose the value of the pledged commitment of each firm. *If using outside capital, hybrid capital / credit facility support, or capital leases, or the like, please provide applicable documentation to prove that capital resources sufficient to meet the firm's capital requirements are available and pledged to the applicable buildout requirements.* Such documentation may include Memoranda of Understanding (MOUs), shareholder pledges of equity contributions, and like instruments. Again, please identify the specific sources of necessary investment

[24] Resolution at 6.

[25] *Id.*, at Finding 8.

capital, the pledged amounts of such investment resources, and copies of financial instruments which secure those pledged amounts, equity positions, and the like.[26]

In its June 28, 2021 response to this question from Staff, GeoLinks explained that the Company planned to fund its RDOF build "utilizing a combination of cash on hand established through a number of profitable revenue streams associated with various service-types, RDOF funding, and revenue from RDOF and RDOF-adjacent service subscriptions. This also includes $10 Million in financing for non-RDOF related purchases (which will help alleviate the need for the Company to obtain financing for its RDOF-related ventures)."[27] GeoLinks added that "while GeoLinks has an understanding with its investors that if additional funding is required for business-related needs those investors are willing to provide that additional funding, because GeoLinks does not at this time anticipate needing to rely on investor funding for RDOF, it does not have any documentation of the kind requested in DR 2.4."[28] Staff's third data request specifically stated that "If using outside capital, hybrid capital / credit facility support, or capital leases, or the like, please provide applicable documentation."[29] But because GeoLinks did not (and still does not) anticipate the need to obtain additional capital or credit in order to complete its RDOF build, it did not provide these documents to CD Staff. At no point following the submission of Data Request 3 did CD Staff inform GeoLinks that such documentation was required in order for Staff to approve GeoLinks' AL 13.

GO 96-B requires that "a defect or omission that becomes apparent during review of the advice letter may require rejection of the advice letter without prejudice if the utility fails, *upon request*, to promptly cure the defect or omission."[30] While GeoLinks was asked on June 15, 2021 to provide additional documentation *if* it was using outside capital or credit, it was not informed that such facilities were required. In fact, the first time GeoLinks was informed that Staff believed such documentation was required was during its meeting with Commission Staff and the

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[26] Data Request No. 3 Regarding Application for Amended ETC Status for FCC RDOF Program Certification, issued June 15, 2021, at 2-3 (emphasis added).

[27] Response of California Internet, L.P. dba GeoLinks (U-7326-C) to DATA REQUEST No. 3 Regarding Application for Amended ETC Status for FCC RDOF Program Certification, sent June 28, 2021, at 5.

[28] *Id*.

[29] Data Request No. 3 Regarding Application for Amended ETC Status for FCC RDOF Program Certification, issued June 15, 2021, at 2.

[30] GO 96-B, Section 7.1 (emphasis added).

Governor's Office on April 1, 2022. During that meeting, CD Director Robert Osborn informed GeoLinks that Staff believed that a capital commitment or credit facility was necessary and that GeoLinks had failed to provide it. In response to this new information, GeoLinks filed a Supplemental Advice Letter (AL 13-A) on April 5, 2022 to provide additional information to address Staff's apparent concerns. GeoLinks provided information regarding a $25 million credit facility that it was in the process of negotiating and a letter from Lockton Insurance Brokers explaining that it was standing by to assist GeoLinks in obtaining debt facilities in excess of $50 million. GeoLinks also provided this information to CD Staff via email on April 4, 2022 and notified Staff that a Supplemental Advice Letter would be filed promptly.

Notably, Draft Resolution Rev. 1 failed to acknowledge GeoLinks' supplemental AL 13-A filing or that it provided additional information in response to Staff's newly articulated assertion that it was needed. From the language of the Draft Resolution and the statements Mr. Osborn made in the April 2, 2022 meeting, it is now apparent that Staff viewed the lack of a capital commitment or credit facility as a disqualifying defect or omission. Staff specifically stated in that Draft Resolution that "given this lack of *demonstrated* financial commitments, Staff concludes that GeoLinks does not appear to have the financial capacity to build and operate the proposed RDOF network."[31] However, because Staff did not (i) inform GeoLinks until April 1, 2022 that failure to obtain a capital commitment or credit facility was a defect or omission, and (ii) give GeoLinks an opportunity to cure this perceived defect or omission, it cannot use that as *post hoc* reasoning to deny GeoLinks' AL 13.

The Commission cannot adopt and apply unknown criteria disclosed for the first time some 15 months after GeoLinks filed AL 13 as the rationale to disqualify GeoLinks from obtaining ETC expansion. Accordingly, because it is predicated on the absence of any notice of a novel requirement and ignores information GeoLinks promptly provided in response to the new standard, the final Resolution must be reconsidered. The lack of sufficient notice is an independent basis for reversal of Resolution T-17764.

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[31] Resolution at 6.

B. The Commission Lacks Jurisdiction to Deny GeoLinks' ETC Designation Expansion Request Based on Whether GeoLinks Might Meet Its FCC RDOF Buildout Obligations

The Resolution concludes that "GeoLinks is not financially capable *of meeting RDOF buildouts*."[32] This predictive judgment is legally deficient for two separate reasons.

In its Opening Comments on the Draft Resolution, GeoLinks described in detail how the Commission lacks jurisdiction to deny GeoLinks' ETC designation expansion request based on whether GeoLinks might meet its FCC RDOF buildout obligations, and that its authority was limited to the specific public interest factors listed in Resolution T-17002. Like all entities appearing before the Commission, GeoLinks reasonably relied on the public interest factors explicitly set forth in Resolution T-17002. But it appears that the Commission does not. Specifically, in its Opening Comments, GeoLinks explained that making a decision based on whether GeoLinks was qualified to obtain federal support added an unwritten public interest factor and, moreover, would improperly intrude on the FCC's exclusive authority to review GeoLinks' RDOF application. GeoLinks warned the Commission that the Commission's own requirements and the demarcation between FCC and Commission authority bar the Commission from considering whether and to what extent GeoLinks might comply with federal standards. But that is precisely what the Commission did in Resolution T-17764.[33]

The Commission attempts to justify its exertion of authority to make determinative decisions regarding receipt of federal funding by claiming it has "been given flexibility in evaluating what factors support a finding that the public interest standard is met in their respective states."[34] The Resolution further states that "the FCC's Report and Order also provided guidelines for state ETC designations, 'a rigorous ETC designation process ensures that only fully qualified applicants received designation as ETC's and that all ETC designees are prepared to serve all customers within the designated service area.'"[35] But the Commission cannot thereafter adopt Resolution T-17002 and then pick and choose from FCC cases how, when and where it chooses to

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[32] Resolution at 5 and Finding 7 (emphasis added).

[33] GeoLinks Opening Comments at 6-8.

[34] *Id.* at 8, citing *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Dkt. 96-45 (FCC 97-157), released May 8, 1997.

[35] Resolution at 9, citing *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Dkt. 96-45, (FCC 05-46), released March 17, 2005, para. 58.

use additional guidance. This is especially true here because the Commission adopted Resolution T-17002 in 2006, *after* the FCC released its 2005 decision providing guidance to state commissions. The Commission carefully considered the importance and relevance of the FCC's guidance, indicated it was "not required to adopt the FCC's Standards without change," and instead adopted the specific public interest factors listed in Appendix A, Section II.G of Resolution T-17002: "The carrier should be able to show that the carrier's designation as an ETC is consistent with the public interest, convenience and necessity. Therefore, the ETC applicant should demonstrate that the designation will increase consumer choices, the advantages and disadvantages of its service offerings, and the absence of creamskimming." The Commission cannot rewrite Resolution T-17002 to contrive new standards that expand its authority based on federal guidance it considered and specifically modified 16 years ago. Having rejected the FCC's guidance in favor of specific public interest standards, the Commission cannot now grant itself the broad flexibility on which it now apparently relies to substantially modify these standards on an *ad hoc* basis.

The Commission's decision to base its decision on a prediction that GeoLinks would not be able to meet RDOF buildout requirements suffers from a second defect justifying reversal. Consistent with the plain language of Section 214(e) of the Communications Act of 1934, as amended ("Act"), establishing the dual-layer regulatory regime, the FCC adopted its *Auction Procedures Public Notice* that, among other things, explains that the FCC will review RDOF applications to determine the applicant's qualifications to be authorized to receive RDOF support.[36] This review includes a comprehensive assessment of whether GeoLinks is financially qualified to be authorized to receive RDOF support. As stated in the *Auction Procedures Public Notice*, the financial information provided in each provisional winning bidder's long-form application is "designed to allow the Commission [FCC] to assess the applicant's qualifications to meet the public interest obligations for each area for which it seeks support."[37]

Despite the clear demarcation of its authority, the Resolution improperly concludes that "GeoLinks is not financially capable *of meeting RDOF buildouts*."[38] This statement oversteps the bounds of the Commission's legal authority. It is one thing for the Commission to establish

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[36] *Rural Digital Opportunity Fund Phase I Auction Scheduled For October 29, 2020; Notice And Filing Requirements And Other Procedures For Auction 904*, 35 FCC Rcd 6077, 6180 (¶ 330) (2020).

[37] *Id.*

[38] Resolution at 5 and Finding 7 (emphasis added).

eligibility criteria for ETC status (even if applied improperly), and quite another for it to step into the FCC's shoes and determine an applicant's financial capability to meet its *federal* RDOF obligations. That analysis is exclusively the FCCs to undertake. And the FCC reserved the right for it to perform this review in the *Auction Procedures Public Notice* during the long-form application process, thereby preempting states like California from performing financial review. No part of the FCC's RDOF rules or its 2005 decision even mentions a role for state regulators in determining a provisional support recipient's ability to meet buildout requirements. The FCC's rules manifestly provide no authority for a state agency unilaterally to preclude a provisional support recipient's performance of its RDOF obligations based on *sui generis* review of the financial consideration specifically set out in the FCC's rules.

The flexibility that the Commission relies on is limited to "a finding that the public interest standard is met in their respective states."[39] The Commission cites the "public interest" standard as its stated reasoning, but its ultimate decision is not about the public interest for the state – rather, it specifically finds that "GeoLinks is not financially capable of meeting *RDOF buildouts*."[40] The analysis is entirely forward looking and overlaps completely with the review and analysis of financial capability that the FCC reserved for itself to perform in the long-form application process. When it comes to review of performance capability for a federal support program, two overlapping decisionmakers applying different standards will lead to uneven and unfair outcomes. Regardless of how broad the Commission's authority to evaluate the public interest may be – and it is, as stated above, constrained by its own Resolution T-17002 – it does not afford the power to usurp the FCC's judgment with respect to the authorization of RDOF support. By endeavoring to determine on its own whether GeoLinks might be capable of performing its RDOF obligations, the Commission does exactly that, effectively precluding the FCC from applying its own rules.

Finally, the language cited in the Resolution regarding states having discretion to decide whether "ETC designees are prepared to serve all customers within the designated service area"[41] also does not apply here because the Commission made no finding regarding whether GeoLinks could serve all customers in its RDOF service areas. As noted above, the Resolution makes a

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[39] *Id*.

[40] *Id*.

[41] Resolution at 9, citing *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Dkt. 96-45, (FCC 05-46), released March 17, 2005, para. 58.

prediction regarding GeoLinks' ability to complete its "RDOF buildouts." Assuming *arguendo* that GeoLinks could not at some point during the six-year RDOF deployment term complete its RDOF buildout, this does not mean that GeoLinks could not serve all customers where buildout had taken place. Or, similarly, assuming GeoLinks were to build out a network that could not deliver the FCC's required speeds but could deliver broadband speeds consistent with the state's threshold (6/1 Mbps), that would not immediately foreclose its ability to serve customers (including providing Lifeline service).[42] Here, the Commission has tried to justify its jurisdictional overreach based on authority purportedly granted by the FCC. As explained above, that authority is limited by both Resolution T-17002 and the FCC's procedures and cannot be expanded to suit a particular desired outcome. If Congress or the FCC intended states to decide whether an entity was capable of meeting its federal RDOF buildout requirements, it would have explicitly given that authority to the states. The Commission must live with these realities, and its unilateral effort to exceed its authority to deny AL 13 is reversible error.

C. The Commission Failed to Follow its Established Precedent in Determining Whether GeoLinks Satisfied the Public Interest Standard

Resolution T-17002 (dated May 25, 2006) established the factors for applicants seeking ETC designation in California:

1. A description of the proposed service offerings and attached service area maps;
2. A description of the advertising plan(s);
3. A statement of commitment to provide service;
4. Submission of the 2-year service quality improvement plan;
5. A showing of the ability to remain functional;
6. A statement of commitment to consumer protection;
7. Demonstration that a carrier's usage plan is comparable to that of the incumbent LEC in the proposed service area; and
8. A public interest determination.[43]

[42] The FCC also has adopted a compliance and enforcement regime to address deficiencies in performance (speed and latency) and deployment. *See* 47 C.F.R. § 54.320. These rules include a draw on an RDOF recipients' letter of credit and substantial monetary forfeitures.

[43] Resolution T-17002 (May 25, 2006).

For the public interest factor, Resolution T-17002 requires the applicant to demonstrate: (1) "that the designation will increase consumer choices", (2) "the advantages and disadvantages of its service offerings," and (3) "the absence of creamskimming."[44]

The Resolution does not find fault with GeoLinks' compliance with seven of the eight factors. Rather, the Resolution states that "it is not in the public interest to approve GeoLinks' AL 13 request for expanded ETC service area *to receive RDOF awards*."[45] There are a number of serious problems with this statement that, independently, warrant reconsideration of the Resolution.

First, as a practical matter, the Resolution simply ignores the fact that the Commission has previously granted GeoLinks a CPCN *and* ETC status, both of which found the Company to have the financial capability to perform the functions of a certificated carrier,[46] and that AL 13, as a Tier 2 Advice Letter, involves only the *expansion* of its existing ETC designation to serve additional areas of the state. The Resolution provides insufficient basis for ignoring GeoLinks' sound record of past performance as a California ETC in evaluating the expansion request but has instead attempted to divine potential future performance in meeting the requirements for the federal RDOF program based on tea leaves of its own choosing, unsupported by concrete evidence or Commission precedent.

Second, the public interest determination required to be undertaken by Staff in Resolution T-17002 must be based on a carrier's ability to "demonstrate that the designation will increase consumer choices, the advantages and disadvantages of its service offerings, and the absence of creamskimming," consistent with the FCC's Rules.[47] But nowhere does Resolution T-17002 state that the Commission's public interest determination requires a new, program-specific demonstration of financial qualifications or operational capability. The Commission established clear requirements for Staff regarding those specific factors that should be applied when making a public interest determination. The Staff is limited to the Commission's specified criteria for determining whether the public interest is met. Regardless of this limitation, the Resolution

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[44] *Id.* at 13, Appendix A, Section G.

[45] Draft Resolution, at 5 (emphasis added).

[46] *See* Resolution T-17646, Feb. 21, 2019 and D.17-05-023, June 1, 2017.

[47] Resolution T-17002, Appendix A, Section II G.

appears inappropriately to apply the public interest aspect of the Commission's role as a "catchall category."

The Commission tries to claim that "Resolution T-17002 set forth certain public interest factors that the Commission would consider, at a minimum" and that "Resolution T-17002 did not purport to define the universe of what might be in the public interest, nor could it."[48] The Commission attempts to rely on *San Diego & Coronado Ferry Co. v. R.R. Com. of Cal*. 210 Cal. 504 (1930) to justify a new definition of "public interest" claiming that "the phrase 'public interest,' like the phrase 'public convenience and necessity,' 'cannot be defined so as to fit all cases [but] must be taken in a relative sense'" and that "for this reason, '[t]he discretion of the Commission in such matters is very broad.'"[49] That might arguably be the case if Resolution T-17002 did not list eight specific criteria that the Commission and its Staff should consider, not one of which suggests that unidentified "other factors" are within the purview of the Commission or can be made up on the spot to suit a desired outcome. But even so, the Resolution fails to show that the Court intended this grant of "broad discretion" beyond the context of a determination of whether a company could obtain a CPCN. A CPCN determination is, by design, intended to be a rigorous review to determine if a company is operationally and financially capable of operating in the state of California. It is a threshold review that must occur before a company can obtain other designations by the Commission, including as an ETC. Because the Court did not explicitly grant the broad discretion that the Commission apparently relied on in the Resolution to all matters of Commission review, it cannot be relied on to grant the Commission unrestrained discretion to go beyond its authority to make up new definitions of what is in the public interest. Instead, the Commission must follow its own rules and precedent. As discussed above, the ETC criteria enunciated in Resolution T-17002 do not include a financial requirement, nor a requirement to supply surety instruments even if an applicant claims it does not need to borrow funds for the project. This is especially true in the context of the Commission's role in making a "public interest determination." Independent of other reasons, it is reversible error for the Commission to impose new ETC requirements on GeoLinks beyond the eight enumerated criteria in Resolution T-17002, without any prior notice whatsoever, and to do so more than a year after GeoLinks filed AL 13.

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[48] Resolution at 8.

[49] *Id.* at 8-9.

Third, there are no factual findings in the Resolution that GeoLinks has failed to satisfy the three public interest criteria set forth in T-17002 to become an ETC. Because GeoLinks already has met all three public interest criteria in its initial ETC grant and in its AL 13 showing, that should end the Commission's public interest analysis. Notably and dispositively, Resolution T-17002 is silent regarding financial qualifications and operational capability as part of the public interest review of even an initial ETC application, let alone an advice letter seeking expansion of an existing ETC designation. While the Resolution claims that "T-17002 did not purport to define the universe of what might be in the public interest," T-17002 does set forth clear standards for review. The Commission could have drafted Resolution T-17002 or some other resolution or rule to allow it to review factors other than the three specific criteria it did adopt.[50] However, because it did not do so, it cannot now impose secret standards outside the scope of its own published rules for ETC designation[51] and try to rely on purported "broad discretion" granted to it in a different context.

Fourth, to the extent that the Resolution cites precedent, the cases discussed only serve to reinforce the disparate treatment given to GeoLinks' advice letter in comparison to earlier grants of ETC designation or expansion. The most recent, and most directly relevant, decision relied upon is the 2021 blanket grant of five requests for ETC designation in connection with the RDOF program. There, the entirety of the discussion concerning "financial capability" with respect to *all five of the applicants* is contained in a single two-sentence paragraph. In sentence number one, the Resolution states generally that "Staff reviewed submitted financial statements, including balance sheets and income statements."[52] Notably, no reference is made to any additional

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[50] As stated above, the three public interest criteria set forth in Resolution T-17002 require the applicant to demonstrate: (1) "that the designation will increase consumer choices", (2) "the advantages and disadvantages of its service offerings," and (3) "the absence of creamskimming." Resolution T-17002 at 13, Appendix A, Section G. Given that GeoLinks will be providing new service to areas unserved by broadband now, GeoLinks was able to definitively demonstrate that its new services would increase consumer choice, provide new service offerings and would not "creamskim" which means in this context to selectively serve the best customers of an incumbent communications provider.

[51] The CPUC's website makes it clear that the Commission will use Resolution T-17002 to determine ETC eligibility: "To obtain ETC designation, please follow instructions in this resolution: Resolution T-17002" https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/service-quality-and-etc/eligible-telecommunications-carrier

[52] Resolution T-17735 at 7.

documentation, including "surety instruments." While the Commission maintains that "Staff sent data requests and follow-up data requests, met with the respective carriers, and performed a thorough analysis of all 15 announced RDOF winning bidders in California, which included the five companies approved in T-17735,"[53] none of this purported inquiry is mentioned in that decision. The second sentence simply concludes "that all five carriers had revenues from other sources and are established carriers with previous telecommunications experience."[54] These same attributes apply equally to GeoLinks, which is an established carrier with revenues from non-USF sources. In contrast, in the Resolution at issue here, more than a page and a half of discussion is focused specifically on Commission Staff's opinions regarding GeoLinks long-term financial projections, and with no mention of its history of performance as an established carrier and its current financial condition.

The disparate treatment is also reflected in the Commission's recent approval of Hankins Information Technology's ETC application.[55] The Commission's decision noted that Hankins IT had filed Confidential Attachment 4 on August 9, 2021 providing proof of surety.[56] It can be assumed that at some point after Hankins filed its ETC application and before August 9, 2021, the Commission requested such information. By contrast, CD Staff made no such request of GeoLinks until April 1, 2022, and then chose to ignore the financial information GeoLinks provided in AL 13-A.[57]

The Resolution's statement that "the Commission has consistently used financial capability as a factor when evaluating an application for ETC designation"[58] avoids the central question that

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[53] Resolution at 10.

[54] Resolution T-17735 at 7.

[55] Decision 22-04-008, Application 21-02-009, issued April 11, 2022, at p. 18. The FCC recently announced that it is "ready to authorize" RDOF support for Hankins IT. *See* Public Notice, *Rural Digital Opportunity Fund Support for 2,061 Winning Bids are Ready to be Authorized; Bid Defaults Announced*, DA 22-483 (rel. May 3, 2022), at Attachment A.

[56] *Id.* at 18.

[57] The Decision also notes that "the scale of expansion proposed by Hankins IT is managerially and operationally reasonable and feasible for the provider. We conclude this based on an assessment of its current operating service area and the applicable characteristics of the area, including the current number of Census blocks in which Hankins IT has both deployed service, and has existing subscribers." *Id.* at18-19. The same is true for GeoLinks, which can leverage proximate infrastructure and ongoing deployment to realize economies of scale in meeting its federal RDOF obligations.

[58] Resolution at 9.

GeoLinks raised. It is not merely a question of *whether* the Commission has looked at financial documentation in prior ETC application decisions, but *how* it has conducted that evaluation. For example, in initially granting GeoLinks ETC status a little more than three years ago, the Commission stated simply that Staff had "reviewed submitted financial statements, including balance sheet, income statement, partners' capital, and cash flow statement" and had "concluded that GeoLinks has the existing capital resources *to commence buildout* of its infrastructure."[59] No mention was made then of any detailed analysis undertaken concerning the potential long-term progress of buildout, nor did the Commission engage in conjecture regarding the correlation of the buildout with the milestones imposed under the FCC's rules. Accordingly, far from supporting the Commission's action in the current Resolution, the earlier GeoLinks ETC designation demonstrates that the Commission did not previously substitute its own judgment for the FCCs in administration of federal universal service support programs.

Because the Commission's authority is limited to granting ETC designations and because the public interest aspect of that authority does not include whether a service provider is financially or operationally capable to receive *federal* funding, the Commission is not the proper entity to determine whether GeoLinks is eligible to receive RDOF funds in an ETC decision. In sum, the Resolution violates the Commission's own ETC decision and rules and should be reversed.

D. Even if it Were Appropriate for the Commission to Apply its Own Financial Standard to the Federal RDOF Program, the Resolution's Conclusion that GeoLinks Lacks Financial Capability to Meets Its Obligations Is Based on Multiple, Significant Factual Errors

The Resolution finds "based on … confidential documents and on other public information … that the applicant is not financially capable of building and operating its proposed RDOF-subsidized network in the timeframe required by the FCC milestones applicable to the RDOF Phase I (AU 904)."[60] This conclusion is fundamentally at odds with the facts in the record, which the Resolution cites only selectively to buttress its faulty conclusions.

The Resolution fails to identify the specific "confidential documents" to which it is referring. As part of its RDOF long-form application process, GeoLinks has been responding to

[59] Resolution T-17646 at 7 (emphasis added).

[60] Resolution at 5-6.

the FCC's questions regarding GeoLinks' RDOF application and specifically its financial and technical qualifications. Specifically, the FCC has asked GeoLinks to supplement its Project Funding Description to include more detailed information regarding non-RDOF revenue streams. In an effort to ensure that CD Staff had all information pertinent to GeoLinks' RDOF application, GeoLinks informed Staff that the FCC had asked additional questions and committed to provide Staff with any updated information that it provided the FCC. GeoLinks provided its Second Revised Project Funding Description to the FCC on November 16, 2021 and provided it to CD Staff the next day (November 17, 2021), receipt of which was acknowledged via email. GeoLinks assumes this is the information to which Staff refers, but notes that Staff asked no questions regarding the substance of the revised Project Funding Description submission.

In the Resolution, Staff expresses concerns regarding GeoLinks' reliance on its predicted RDOF subscription rate, stating that "GeoLinks' pro forma financial statements rely on aggressive subscriber take rates to generate the cash flow needed to meet its RDOF capital requirements."[61] Accordingly, it states that "the applicant needs to provide evidence of sufficient credit, and/or capital sureties, to mitigate the risk of forecasted cash flow from a high subscriber take rate not materializing."[62] These conclusions are mistaken.

First, as shown in its Comments, while GeoLinks does propose an anticipated subscription rate of more than the California Advanced Services Fund ("CASF") average of 38.6%, this higher subscription rate is not required for GeoLinks to be able to undertake its proposed RDOF project successfully. This data is in the record. GeoLinks provided two Confidential Attachments to Staff with its revised Project Funding Description. The first spreadsheet provided with Confidential Attachment D details the costs associated with GeoLinks' proposed RDOF broadband deployment. While this attachment shows anticipated cash flows based on the higher proposed subscription rate, even when that proposed rate is reduced to the CASF average of 38.6%, GeoLinks' anticipated RDOF revenues remain higher than the overall project cost.[63] In response to this information, the Resolution states simply that Staff have "estimated the revenue and cash flow with the much higher take rate is insufficient to cover the overall project cost, so lowering the take

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[61] Resolution at 6.

[62] *Id*.

[63] GeoLinks reasonably believes that the CASF average take rate of 38.6% will be low for this project due to the fact these areas are unserved or underserved by fast Internet speeds.

rate does nothing to mitigate the overall project financing risk."[64] But the Resolution provides no factual underpinning detailing the basis for the Staff estimates in support of this conclusory assessment.

Second, the second attachment of Confidential Attachment D details GeoLinks' estimated EBITDA for all 10 years of the RDOF program excluding any projected RDOF revenues. GeoLinks sought to demonstrate that the Company will have more than sufficient funds to meet the FCC's build-out milestones based on the Company's projected EBITDA from existing business (excluding revenues from the RDOF program). Specifically, GeoLinks provided details to show that, even excluding projected RDOF subscription revenue, its projected EBITDA will exceed its anticipated RDOF deficit for the first two years of the program. Because GeoLinks expects sufficient revenue streams to support both the Company's existing business lines and the first two years of its RDOF network deployment, *GeoLinks does not anticipate needing to take on any additional debt or capital sureties in order to complete the RDOF project*. Therefore, GeoLinks has not pursued additional funding sources specifically for RDOF at this time. In the event that GeoLinks will ever need such additional funding sources, however, GeoLinks will be able to borrow successfully against a strong balance sheet of network assets and long-term contractual cash flows from broadband subscriber services, which it explained fully in its revised Project Funding Description. GeoLinks is working with the FCC to answer some additional questions regarding the Company's Project Funding Description and historical company performance and remains confident that the FCC will be satisfied with those responses.

In addition, the Resolution fails to consider at all the fact that GeoLinks has been able to secure Letter of Credit Commitment Letters for all three states in which it was named a provisional RDOF winner in the amount of its first year of support for each state in addition to its Year Three CAF II Letters of Credit. Each of these Commitment Letters and Letters of Credit was issued by a bank meeting the FCC's rigorous requirements. These Commitment Letters were provided to Staff on June 22, 2021.

In sum, in the information it submitted in support of AL 13, GeoLinks has clearly demonstrated that it has the financial capacity to undertake and complete its RDOF project. Thus,

[64] *Id*. at 11.

even in light of Staff's erroneous reliance on alleged financial incapacity as a justification for denying AL 13, the Commission should grant GeoLinks' ETC designation expansion request.

E. The Commission Fails to Weigh in its Public Interest Analysis the Potential Adverse Impact on Rural California Residents

The Commission also must recognize the far-reaching impact on the public interest that its decision will have on more than 90,000 unserved California locations that will be denied the opportunity to access affordable, high-speed broadband in the near term. As outlined in its Opening Comments, the areas of the state where GeoLinks was named a provisional RDOF winner are unserved areas that either only have slow Internet connections or no Internet connections at all. These are areas that have been left behind by traditional Internet service providers due to the difficulty to make a business case in areas of sparse, widely separated populations. Denying these isolated communities the ability to obtain high-speed broadband services is directly contrary not only to the objectives of the federal RDOF grant program, but also to well-established policy in the state of California. Section 281(a) of the Public Utilities ("PU") Code orders the Commission to develop, implement and administer the CASF to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation and the substantial social benefits of advanced information and communications technologies.

In Section 281(b)(3), the Commission encourages CASF funds be used to match or leverage federal moneys for communications infrastructure, including monies from the FCC, and in Section 281(b)(5) the Commission is encouraged to maximize investments in new, robust, and scalable infrastructure. Further, the Governor's August 14, 2020 Executive Order N-73-20 orders California state agencies to pursue a minimum broadband speed goal of 100 Mbps download speed to guide infrastructure investments and program implementation to benefit all Californians. It further orders the CPUC to accelerate broadband deployment.

By approving the Resolution denying GeoLinks the expanded ETC status necessary to meet its threshold RDOF requirements, the Commission is effectively declining tens of thousands of Californians access to more than $148 million in federal funding for Gigabit fiber broadband deployment. GeoLinks is ready and willing to use this support to provide these urgently needed services where no other broadband provider has stepped forth to do so. Incumbent broadband providers have consistently declined to take the steps necessary to serve the more than 90,000 locations covered by the provisional support that GeoLinks seeks to deploy. The Resolution's denial of ETC status impedes GeoLinks' ability to provide this service. If the Commission does not reconsider this action, it is speculative to suggest that broadband service at speeds of at least 100/20 Mbps might somehow come to the subject areas through other means, at some other unknown future time. There is no other immediate option to affect this outcome. There are additional federal broadband subsidies on the horizon such as the NTIA's BEAD program, but the NTIA's rules for those subsidies, the criteria for their allocation, and the total amount of funding available for California are currently unknown. At present, all that is known is that at least $100 million will be made available to California with some possibility of additional funds at some later date and that recipients will have four years to complete their projects. Assuming that BEAD funds are not awarded until 2023, that means that projects will need to be completed by 2027, whereas GeoLinks' RDOF must meet ongoing milestones until 2028 if it is authorized this year.

On April 21, 2022, the Commission issued its Federal Funding Account rules using funds from the US Treasury Capital Projects. While the Resolution claims that "the CPUC is currently implementing a $2 billion last-mile program to bring broadband to unserved areas of the state, and additional last-mile funding is expected from the Infrastructure Investment and Jobs Act, offering another opportunity to build in the identified RDOF areas," it is unknown whether any Internet service provider will step forward to serve any of these 90,000 locations. To date, no provider has done so even with state-level funding available via the Commission's current California Advanced Services Fund. The Commission implies GeoLinks could tie up these 90,000 locations for up to six years. GeoLinks reminds this Commission of its exemplary track record in California; it has never failed on a broadband project build and is exceeding the FCC's deployment milestones for its CAF II project. As noted in its Opening Comments, GeoLinks carefully researched its RDOF bidding areas to expand upon its existing and CAF II build, and this is not the more expensive greenfield build that the Staff seems to envision. So, if GeoLinks is unable to receive RDOF funding and deploy high-speed facilities to its provisional award areas, the Californians that live in these areas likely will be left without fiber-delivered Gigabit broadband for many years to come. In contrast, GeoLinks is able to begin construction within six to twelve months of FCC authorization. GeoLinks is the best Internet provider to bring broadband services to these more than 90,000 locations promptly, consistent with the goal of the FCC RDOF program and the State's broadband goals that are in law.

In response to these concerns, the Resolution states "it is a better use of public money to fund projects fully rather than insufficiently,"[65] but this assessment is being rendered with respect to "public money" that is not within the Commission's unilateral power to grant or withhold. It is simply not the Commission's call to make; it is the FCC's decision to make. The public interest is ill-served when one level of government intrudes on the jurisdiction of another.

F. If GeoLinks Is Not Deemed to be an ETC in the Expansion Areas, It Will Be in Default of the FCC's RDOF Requirements and Subject to Substantial Monetary Forfeiture

Section 214(e) of the Communications Act requires a state commission to designate a carrier as an ETC before the FCC can authorize high-cost support such as RDOF. The unfortunate consequence of this is, if the Resolution stands, GeoLinks cannot expand its existing ETC designation beyond its CAF areas and thus will be in default under FCC rules. Absent any waiver the FCC may grant, the financial exposure to GeoLinks will be substantial.

The FCC has established a base default forfeiture penalty of $3,000 for each geographic area subject to bid, capped at 15% of the total winning bid for the support term.[66] Based on this determination, GeoLinks estimates the base forfeiture of its potential default liability to be $22,239,098. To determine the final forfeiture amount, i.e., whether the base forfeiture amount should be increased or decreased, the FCC's "Enforcement Bureau will consider the 'nature, circumstances, extent and gravity of the violations.'"[67]

Assuming the FCC applies the base forfeiture, the payment of $22,239,098 will have substantial adverse ramifications for GeoLinks. It will be in a worse position than if it had never filed for RDOF support – it will need to pay $22,239,098 to the U.S. Treasury, funds it could have used to expand and upgrade its existing network for the benefit of consumers. Such a forfeiture would be catastrophic for GeoLinks, causing the company to forego certain planned projects, delay or completely change planned California-based hiring and the acquisition of additional office and warehouse space in the state, force GeoLinks to move away from the residential broadband market,

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[65] *Id*. at 11.

[66] *Rural Digital Opportunity Fund*, Report & Order, 35 FCC Rcd 686, 735-36 (¶¶ 114-117) (2020).

[67] *Id.* at para. 115, quoting 47 C.F.R. § 1.80(b)(8).

and potentially cause the company to engage in layoffs or network divestiture. In addition, such a forfeiture will have a chilling effect on GeoLinks' willingness and ability to apply for more broadband grant funding (both at the state and federal levels). Moreover, it will have incurred opportunity costs from other funding sources and a reduced ability to bring in investment capital. The Commission cannot ignore the significant harm to which GeoLinks would be subject if it is not deemed to be an ETC in the areas sought in AL 13.

III. CONCLUSION

For the foregoing reasons, GeoLinks requests that the Commission acknowledge its legal and factual errors, promptly reverse the conclusion of the Resolution, and grant the ETC designation extension requested by GeoLinks for its RDOF areas as of February 5, 2021.

Respectfully submitted,

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